IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2006

Coram

The Hon'ble Mr. Justice A.KULASEKARAN

Writ Petition No. 20889 of 2003

M/s.Vijay Foundation (P) Ltd.
Rep. by its Director, R.Thiagarajan,
No.42/10, Kalaimagal Nagar,
II Main Road, Ekkattuthangal,
Chennai 600 097. .. Petitioner

Vs.

1. The Principal Commissioner and
Commissioner of Land Reforms,
Chepauk, Chennai 600005.

2. The Assistant Commissioner of
Urban Land Tax and Competent
Authority of Urban Land Ceiling,
Alandur Area, Sannadhi Street,
Adambakkam, Chennai 600088.

3. The Tahsildar, Tambaram Taluk,
Tambaram, Chennai 600045. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus as stated therein.

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For Petitioner : Mr.R.Muthukumarasamy, Sr. Counsel
for Mr.G.Veerapathiran
For Respondents : Mr.M.Dhandapani
Addl. Govt. Pleader

O R D E R

This writ petition is filed for the issuance of a writ of certiorarified mandamus to call for the connected records of the

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second respondent issued in his Proceedings Na.Ka.S.R.154/98 dt.24.2.1998 under Section 9(5) of the Principal Act declaring the petitioner's land in S.No.429/1C of Perumbakkam village measuring to an extent of 3550 sq.mts. as excess vacant and the notice issued by him in 2nd respondent's proceedings R.C.No.154/98 in Form VII dated 30.11.1998 under Section 11(5) of the said Act requiring to surrender possession of the said land with the Tahsildar, Tambaram and the proceedings of the 1st respondent in his Endt. R.C.2896/2001-J1 dated 20.2.2003, quash the same in so far as the petitioner is concerned and direct the second respondent to declare that all proceedings taken by the second respondent to acquire the lands as excess vacant land shall abate under Section 4 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act (Act 20 of 1999).

2. The petitioner is a company incorporated under the Companies Act. The property comprised in Survey No.429/1C Perumbakkam Village to an extent of 1 acre is the subject matter of the writ petition. The said land was originally belonged to one Krishnan. The said Krishnan sold 75 cents by executing three sale deeds dated 21.12.1984 each 25 cents to one J.Venkata Subba Reddy, Sudha and Balakrishna Reddy. The said three persons sold their respective 25 cents of land under separate sale deed in favour of the petitioner on 21.07.1995, 08.08.1995 and 18.07.1995 respectively. The said Krishnan also sold 25 cents retained by him to the petitioner on 18.08.1995. Though The Tamil Nadu Urban Land (Ceiling and Regulation) Act (hereinafter referred to as 'the Act') was introduced in the year 1978, the same was extended to Perumbakkam village only on 09.08.1995 by a notification in Government gazette under Section 48(2) of the Act. After extending the application of the said Act to Perumbakkam village, the respondents issued notice under Section 9(5) of the Act to the said Krishnan on 24.02.1998. It is stated that the said Krishnan was not available and hence it was served by affixure. Similarly, notices under Sections 10(1) and 11(5) were also served on the said Krishnan on 15.04.1998 and 30.11.1998 respectively by way of affixure. It is stated by the petitioner that despite the issuance of the said notices and the orders passed by the respondents, the property has been in the possession of the petitioner ever since from the date of purchase in the year 1995 from their vendors. The petitioner came to know about the proceedings initiated by the respondents against the said Krishnan only in the year 1999 and immediately they filed a writ petition in W.P.930 of 2001 seeking a writ of mandamus directing the respondents to declare that all proceedings taken to acquire the said land shall abate as per the provisions of Section 4 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999. The said writ petition was dismissed on 18.01.2001 permitting the petitioner to file an appeal before the appellate authority invoking Section 33 of the said Act. The petitioner also filed an appeal under Section 33 of the Act before the appellate authority on 20.02.2001. It is to be

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remembered that the said Act was repealed on 01.06.1999. Hence the appellate authority found that the appeal cannot be entertained in view of the fact that the Act was already repealed, by order dated 22.02.2003. The present writ petition is filed seeking to quash the order of the appellate authority dated 22.02.2003 and ceiling proceedings.

3. The learned senior counsel Mr.R.Muthukumarasamy appearing for the petitioner submitted that all the proceedings were initiated only against the said Krishnan, who sold major portion of the property as early as in the year 1984 and also the property retained by him to an extent of 25 cents on 18.08.1995 to the petitioner herein. The persons purchased from the said Krishnan under three separate sale deeds to an extent of 25 cents each also sold the said property to the petitioner by registered sale deeds dated 21.07.1995, 08.08.1995, 18.07.1995 respectively. The application of the Act was extended to Perumbakkam village only on 09.08.1995. On the said date, the said Krishnan was not holding any land or land in excess of the ceiling limit as mentioned in the Act. Hence the proceedings initiated against the said Krishnan are not in any way interfere with the rights of the petitioner. Though the respondents have claimed that they have taken possession on 01.06.1999 invoking Section 11(5) of the Act, the petitioner retained possession of the property by erecting necessary fence from the date of the purchase from their vendors. In view of the fact that the proceedings initiated by the respondents against the person, who has not held the land, the pursuant action including the action taken under Section 11(5) are invalid. The petitioner came to know about the proceedings initiated by the respondents against the said Krishnan only in the year 1999. Immediately they filed a writ petition and this Court directed them to file an appeal, which was also done. The appellate authority refused to entertain the appeal on the ground that the Act itself was repealed on 16.06.1999. Hence it is necessitated them to file the present writ petition and prayed for allowing the same.

4. Learned Additional Government Pleader Mr.M.Dhandapani appearing for the respondents submitted that under Section 4, no person shall be entitled to hold any vacant land in excess of the ceiling limit. The authorities came to know that the said Krishnan was holding excess land and also he failed to file necessary statements required under Section 7 of the Act. Hence proceedings were initiated against the said Krishnan and notice under Section 9 (5) of the Act was issued on 24.02.1998, which was served by way of affixure alone, and orders were passed under Section 10(1) and 11(5) of the Act on 15.04.1998 and 30.11.1998 respectively. Thus the respondents had complied with the provisions of the law and took possession of the said land, which was found excess, on 01.06.1999 and handed over the same to the revenue department and prayed for

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dismissal of the writ petition.

5. I have carefully considered the submissions made by the learned senior counsel for the petitioner and the learned Additional Government Pleader for the respondents.

6. No doubt, under Section 4 of the Act, no person shall be entitled to hold any vacant land in excess of the ceiling limit. The person holding vacant land in excess of ceiling limit must file a statement under Section 7(2) of the Act. On receipt of the statement, the authorities shall consider it under Section 9 of the Act, pass order under Section 9(5) of the Act and proceed further issuing final statement under Section 10 of the Act and taking possession under Section 11(5) of the Act. In this case, though the Act was introduced in the year 1978, the same was extended to Perumbakkam village only on 09.08.1995, the date on which the notification was issued by the Government of Tamil nadu. On the date of issuing the said notification, the said Krishnan was not the owner of the said land. On the said date, no doubt, the petitioner purchased major portion of the land comprised in S.No.429/1C, Perumbakkam village. In this case, the petitioner has not filed the statement as required under Section 7 (1) of the Act and in such cases, the competent authority is of opinion that person holding vacant land in excess of the ceiling limit at the commencement of this Act, it may serve a notice upon such person under Section 7 (2) of the Act requiring him to file within such period mentioned therein and on whom such notice is served shall be bound to comply with such notice. Sub-clause (5) of Section 7 contemplates that if any person who is liable to file a statement under this Act fails to file the statement within the period within which it has to be filed, the competent authority, may obtain necessary information in such manner as it thinks fit. Surplus of land varies from person to person, hence, before deciding surplus, the person, who is the owner of the property has to be given opportunity. As defined under Section 3 (j) of the Act, a person includes a individual, a family, a firm, a company or an association or body of individual whether incorporated or not. Similarly, ceiling limit has been fixed under Section 5 of the Act in cases of every person (other than family and industrial undertaking) the ceiling limit shall be to a particular extent. Until notice is served to the person, the ceiling limit cannot be specified, hence, notice to the person is very much required. The authority is empowered under Section 7 (5) and Section 9 to prepare a draft statement and serve it on the person liable to file and inviting his objection. Under Section 9 (5), the competent authority shall duly consider any objection received, within the period specified in the notice and shall after giving the objector a reasonable opportunity of being heard pass such orders as it deems fit. Under Section 10, after disposal of the objections, if any, the competent authority shall make necessary alteration in the draft

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statement in accordance with the order passed on the objections and shall determine the vacant land held by the person concerned in excess of ceiling limit and cause a copy of statement as so altered to be served in the manner referred to in sub-section (4) of Section 9 and such statement shall be deemed to be the final statement. As soon as after service of final statement under Section 10, the competent authority shall cause notification giving the particulars of the vacant land held by such person in excess of the ceiling limit stating that such vacant land is to be acquired by the State Government and claims of all persons interested in such vacant land may be made by them personally or by their agents giving particulars of the nature of their interests in such land, be published for the information of the general public in Government Gazzette and in such manner as may be prescribed under Section 11. Section 11 (2) says that after considering the claims of all persons interested in such land, the competent authority has to determine the nature and extent of such claims and pass such orders as it deems fit. Under Section 11 (3), at any time after the publication of the notification under sub-section (1), the land be deemed to have been acquired by the state Government and vests absolutely in it free from all encumbrances. Section 11 (5) says that the State Government, by notice in writing, order any person, who may be in possession of it to surrender or deliver possession thereof to State Government or to any person duly authorised by the State Government in this behalf within 30 days of the service of the notice. If any such person fails to comply with the order made under sub-section (5) of Section 11, the competent authority may take possession of the vacant lands by using such force as may be necessary. Section 12 sets out the quantum of compensation payable to the person having interest in the vacant land. Basis of compensation and also guidelines for computing compensation is also mentioned. Expeditious payment of compensation within one year has been prescribed in Rule 11, which reckoned from the date of acquisition.

7. The respondents herein have initiated acquisition proceedings against the person who is not at all owner of the lands. The above quoted mandatory conditions mentioned in Sections 7 to 12 were not followed by the respondents. The statutory conditions for the purpose of acquiring the lands has not been followed at all in this case, hence, the alleged possession taken by the respondents is vitiated. The Ceiling Act is not like Land Acquisition Proceedings where the authorities are required to serve notice upon the owner or occupier of the land and on such person known or believed to be interested thereon to show cause within 30 days from the date of service of notice as to why the lands should not be acquired, hence, based on the entries in the mutation proceedings, the opportunity be given to the owner or occupier or person interested in the land be sufficient because the notification specifies the intention of the Government to acquire the land for public purpose, which is

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mandatory. So, the defence that mutation proceedings contain only name of Krishnan, hence, the proceedings were not initiated against the petitioner is not a valid ground. Based on the proceedings initiated against the wrong person, the lands of the petitioner cannot be acquired by the respondents.

8. Admittedly, the possession of the land is with the petitioner ever since the date of purchase continuously and this Court considering it at the time of admission of this writ petition protected the same by issuing interim order, which is also in force till date. Moreover, the above said Act was also repealed on 16.09.1999, hence, it is not open to the respondents to proceed against the petitioner.

9. In view of the above discussion, the entire acquisition proceedings initiated by the respondents in respect of the petitioner's land is quashed. The writ petition is allowed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ATR
To

1. The Principal Commissioner and
   Commissioner of Land Reforms,
   Chepauk, Chennai 600005.

2. The Assistant Commissioner of
   Urban Land Tax and Competent
   Authority of Urban Land Ceiling,
   Alandur Area, Sannadhi Street,
   Adambakkam, Chennai 600088.

3. The Tahsildar, Tambaram Taluk,
   Tambaram, Chennai 600045.

+1cc to the Govt. Pleader Sr 32976
+1cc to Mr.G.Veerapathiran, Advocate Sr 32933

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